

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SPHEAR INVESTMENTS, LLC, a
California Limited Liability Company,

Plaintiff,

vs.

SUNGLASS INTERNATIONAL --
SANTA BARBARA, LLC, a
California Limited Liability Company;
SUNGLASS INTERNATIONAL,
LLC, a Hawaii Limited Liability
Company; DOYLE G. BETSILL, an
individual; and DOES 1-20, inclusive,

Defendants.

**CASE NO.: CIV 11-5345 AHM
(PLAx)**

**JUDGMENT AGAINST
DEFENDANT DOYLE G.
BETSILL**

**Santa Barbara Superior Court
Case No. 1380939**

**Assigned for all Purposes to the
Honorable A. Howard Matz**

On May, 30 2012, by an in chambers minute order, the honorable Howard A. Matz granted the unopposed motion for summary judgment ("Motion") filed by Plaintiff Sphear Investments, LLC, a California limited liability company, against defendant Doyle Betsill, in pro per. Having considered all of the evidence submitted with the Motion, including Plaintiff's Statement of Uncontroverted Facts and Conclusions of Law, and considering any opposition thereto, the Court FINDS, ORDERS, AND DECREES that based on the evidence cited below and submitted with the Motion, the following material facts are undisputed:

UNCONTROVERTED FACTS**EVIDENCE IN SUPPORT**

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| <p>1. Plaintiff Sphear Investments, LLC (“Sphear”) and Sunglass International, LLC, a Hawaii limited liability company (“Sunglass International”), entered into a lease (the “Lease”) of a commercial space located at 811 State St., Suite H, Santa Barbara, California 93101 (the “Premises”).</p> <p>2. Sunglass International made a security deposit of \$9,296.</p> <p>3. Under the Lease, commencing April 15, 2007 and continuing during the term of the lease, Sunglass International agreed to pay rent in the amount of \$7,968 until March 1, 2008, and every anniversary thereafter, when the rent was increased by 3%.</p> <p>4. Under the Lease § 16 et seq., Sunglass International was obligated to pay monthly to Sphear its estimated portion of common area maintenance, insurance, taxes, and utility costs, until the actual costs of such services could be reconciled with the estimated costs and the balance owed to Sphear or credited to Sunglass International.</p> <p>5. The term of the Lease was five years commencing March 1, 2007 and expiring February 29, 2012.</p> <p>6. The Premises and the shopping center where the Premises are situated (“Shopping Center”) is managed by Investec Management Corporation (“Investec”).</p> <p>7. Defendant Doyle Betsill signed a written guaranty of the Lease providing that he would perform the obligations owed to Sphear under the Lease, including payment of all rent and other sums due under the Lease.</p> | <p>1. Declaration of Kevin R. Nimmons (“Nimmons Decl.”) Exhs. A and B, Requests for Admission Nos. 1 and 2; Declaration of Roxanne Reed (“Reed Decl.”), ¶ 3.</p> <p>2. Rogers Decl., ¶4, ¶ 7, ¶ 20, Exh. 1 [Tenant Ledger, p. 1], ¶ 12.)</p> <p>3. Nimmons Decl. Exhs. A and B, Requests for Admission Nos. 1 and 2 [see Page 1 of Lease, “Fundamental Lease Provisions” re minimum monthly rent]; Reed Decl., ¶ 3</p> <p>4. Nimmons Decl., Exhs. A and B, Requests for Admission Nos. 1 and 2; Reed Decl., ¶ 3; Brace Decl., ¶¶ 3-6; Rogers Decl., ¶¶ 13-19, Exhs. 2-6.</p> <p>5. Reed Decl., ¶ 5; Nimmons Decl., Exhs. A and B, Requests for Admission Nos., 1 and 2 [see Page 1 of Lease, “Fundamental Lease Provisions”]</p> <p>6. Reed Decl., ¶¶ 2-3.</p> <p>7. Nimmons Decl., Exhs. A and B, Requests for Admission Nos. 32-34; Reed Decl., ¶ 6.</p> |
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| <p>1 8. In May 2009, Sphear, Betsill, and
 2 Sunglass International, executed a
 3 First Amendment to Lease allowing
 4 Sunglass International rent
 5 concessions and rent deferrals as
 6 described in the First Amendment.</p> <p>7 9. During the term of the lease,
 8 Sunglass International was given
 9 \$37,000 in rent concessions.</p> <p>10 10. During the term of the lease,
 11 Sunglass International was given
 12 \$44,328.04 in rent deferrals.</p> <p>13 11. In June 2009, Sphear agreed to
 14 amend the Lease again, this time to
 15 allow Sunglass International to
 16 change its permitted use and trade
 17 name, and the parties executed the
 18 Second Amendment to Lease
 19 providing for these changes.</p> <p>20 12. In September, 2010, Sphear agreed
 21 to amend the Lease to allow
 22 Sunglass International to change its
 23 permitted use and trade name to
 24 allow it to operate as "Handbag
 25 Junction" selling handbags and
 26 related items, and the parties
 27 executed the Third Amendment to
 28 Lease providing for these changes.</p> <p>13. No rent for March 2011 has ever
 been paid.</p> <p>14. The last payment received by
 Investec or Sphear for rent owed by
 Sunglass International was in
 February 2011 for \$3,615.</p> <p>15. On March 7, 2011, Steven Tidrick,
 counsel for Sunglass International,
 sent a letter to Roxanne Reed of
 Investec with the keys to the
 Premises and stating that Sunglass
 International had permanently
 vacated the Premises.</p> <p>16. On March 15, 2011, pursuant to
 Civil Code 1951.3, Investec served
 a Notice of Belief of Abandonment,
 on Sunglass International and Dovle</p> | <p>8. Nimmons Decl., Exhs. A and B,
 Requests for Admission Nos. 25-
 26; Reed Decl., ¶ 7.</p> <p>9. Karen Rogers ("Rogers Decl.") ¶¶
 4-5, 8, Exh. 1 [Tenant Ledger
 showing rent concessions of
 \$37,000 from February 2009 to
 February 2012].</p> <p>10. Rogers Decl., ¶¶ 4-5, 9-10, Exh. 1
 [Tenant Ledger showing rent
 deferrals from February 2009 to
 January 31, 2012].</p> <p>11. Nimmons Decl., Exhs. A and B,
 Requests for Admission Nos. 17-
 19; Reed Decl., ¶ 9.</p> <p>12. Reed Decl., ¶ 10, Exh. 1.</p> <p>13. Reed Decl., ¶ 18; Rogers Decl. ¶¶
 4, 7; Exh. 1 [Tenant Ledger].</p> <p>14. Reed Decl., ¶ 18; Rogers Decl. ¶¶
 4, 7; Exh. 1 [Tenant Ledger].</p> <p>15. Reed Decl., ¶ 19, Exh. 10 [letter
 from Steven Tidrick stating
 Premises have been permanently
 vacated]</p> <p>16. Reed Decl., ¶ 20; Declaration of
 Tyler Hansen ("Hansen Decl."), ¶¶
 5-7, Exh. 1 [the notice], Exh. 2
 [return receipts].</p> |
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1 Betsill, using the proper method
2 under the Lease, particularly
3 paragraph 23.3 of the Lease, and to
the proper addresses for notice
under the Lease.

4 17. By the expiration of the notice
5 period stated in the Notice of Belief
6 of Abandonment, none of the rent
7 for March 2011 had been paid and
no one had sent to Investec or
Sphear any statement of intention to
not abandon the Premises.

17. Reed Decl., ¶¶ 21-22; Rogers
Decl., ¶¶ 4, 7; Exh. 1 [Tenant
Ledger]; Hansen Decl., ¶ 8.

8 18. As of April 2, 2011, Sunglass
9 International had abandoned the
10 Premises under Civil Code §
11 1951.3, terminating the Lease.

18. Reed Decl., ¶¶ 20-22; Rogers
Decl., ¶¶ 4, 7; Exh. 1 [Tenant
Ledger]; Hansen Decl., ¶ 8.

12 19. Sphear, through its leasing agent,
11 Investec, was able to lease the
12 Premises from November 18, 2011,
13 to January 4, 2012 and received
\$10,000 in rent; \$600 in
14 commissions was paid to Investec as
a commission for finding a tenant.

19. Reed Decl., ¶ 23; Rogers Decl., ¶
22; Brace Decl., ¶ 7.

15 20. Because Sunglass International
16 breached the Lease, all amounts
17 under the First Amendment to Lease
for rent concessions and rent
18 deferrals (\$37,000 and \$44,328.24
respectively) are now due and
19 owing, subject to offset by the
security deposit of \$9,296 and CAM
adjustments for 2010 and 2011.

20. Nimmons Decl., Exhs. A and B,
Requests for Admission Nos. 25
and 26 [First Amendment]; Rogers
Decl., ¶ 4, Exh. 1 [Tenant Ledger],
¶¶ 7-12, 20, 21.

20 21. Sphear has suffered \$187,761.88 in
21 damages.

21. Rogers Decl., ¶ 4, Exh. 1 [Tenant
Ledger], ¶¶ 11-12, ¶¶ 13-22, Exhs.
2-6 [CAM calculations and
invoices], ¶ 23, Exh. 7 [Damage
Summary]; Brace Decl., ¶¶ 3-6, 8.

22 22. Betsill breached the Guaranty by
23 failing to pay all amounts due by
24 virtue of Sunglass International's
breach of the Lease.

22. Reed Decl., ¶ 10, Exh. 1, ¶ 18, ¶
20, ¶ 25; Rogers Decl., ¶¶ 4, 7;
Exh. 1 [Tenant Ledger].

26 23. As a proximate cause of Betsill's
27 breach of the Guaranty, Sphear has
suffered \$187,761.88 in damages.

23. Nimmons Decl., Exhs. A and B,
Requests for Admission Nos. 25
and 26 [First Amendment]; Rogers
Decl., ¶ 4, Exh. 1 [Tenant Ledger],
¶¶ 7-12, 20, 21, ¶¶ 11-12, ¶¶ 13-

- 22, Exhs. 2-6 [CAM calculations and invoices], ¶ 23, Exh. 7 [Damage Summary]; Brace Decl., ¶¶ 3-6, 8.
24. By virtue of the Guaranty, Betsill owes \$187,761.88 in damages. 24. Nimmons Decl., Exhs. A and B, Request for Admission Nos. 32-34 [Guaranty]; Nimmons Decl., Exhs. A and B, Requests for Admission Nos. 25 and 26 [First Amendment]; Rogers Decl., ¶ 4, Exh. 1 [Tenant Ledger], ¶¶ 7-12, 20, 21, ¶¶ 11-12, ¶¶ 13-22, Exhs. 2-6 [CAM calculations and invoices], ¶ 23, Exh. 7 [Damage Summary]; Brace Decl., ¶¶ 3-6, 8.
25. Sphear has fully performed all of its obligations owed under the Lease and Guaranty. 25. Reed Decl., ¶ 25; Brace Decl., ¶ 9.
26. Neither Sphear nor Investec acted in bad faith or in breach of the Lease by refusing a proposed assignment of the Lease to a potential tenant (Robert Stephens) proposed by Sunglass International who would be selling self-serve frozen yogurt. 26. Reed Decl., ¶ 14, Exh. 7, ¶ 14, Exh. 8, ¶ 15, Exh. 9; Declaration of Helen Jepsen ("Jepsen Decl."), ¶¶ 2-5, Exh. A.

The Court further FINDS, ORDERS, and DECREES, that there is no genuine dispute as to any material fact and that under Federal Rule of Civil Procedure, Rule 56, Plaintiff Sphear Investments, LLC, a California limited liability company, is entitled to judgment as a matter of law against defendant Doyle Betsill on the second cause of action for breach of written guaranty in Plaintiff's Second Amended Complaint in the amount of \$187,761.88 plus interest. All unserved parties are dismissed without prejudice.

The Court further FINDS, DECREES, and ORDERS that Judgment is entered in favor of plaintiff Sphear Investments, LLC, a California limited liability company against defendant Doyle Betsill as follows:

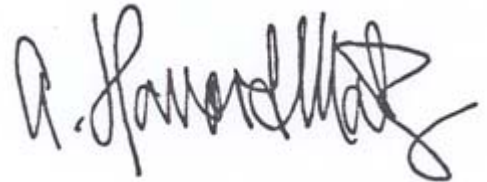
1 a. Defendant Doyle Betsill is ordered to pay to plaintiff Sphear
2 Investments, LLC, a California limited liability company, \$187,761.88 in
3 damages;

4 b. Defendant Doyle Betsill is ordered to pay to plaintiff Sphear
5 Investments, LLC, a California limited liability company, \$18,293.61 in interest.

6 c. Plaintiff Sphear Investments, LLC, a California limited
7 liability company, may file a motion for attorney's fees and apply for costs within
8 15 days of entry of this Judgment.

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10 IT IS SO ORDERED this 11th day of June, 2012.

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The Honorable A. Howard Matz